

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE 1992 LEXUS SC400

No. 2 CA-CV 2014-0041
Filed December 19, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Civ. App. P. 28(c).

Appeal from the Superior Court in Pima County
No. C20122846
The Honorable Carmine Cornelio, Judge

APPEAL DISMISSED

COUNSEL

Barbara J. LaWall, Pima County Attorney
By Kevin S. Krejci, Deputy County Attorney, Tucson
Counsel for Appellee

Kimminau Law Firm, PC
By Chris J. Kimminau, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which
Chief Judge Eckerstrom and Judge Espinosa concurred.

IN RE 1992 LEXUS SC400
Decision of the Court

M I L L E R, Presiding Judge:

¶1 Craig Ehrhorn appeals from the trial court's denial of his motion to set aside a judgment of forfeiture against property he claims to own. For the reasons stated below, we dismiss for lack of jurisdiction.

Factual and Procedural Background

¶2 In February 2012, the state filed a notice of pending forfeiture, which listed several items of personal property to be forfeited, including a 1992 Lexus automobile. Ehrhorn attempted to file a verified claim and request for judicial proceedings, but his claim asserted an interest in specifically enumerated property that was not the subject of forfeiture in the instant case. In June 2012, the trial court entered an order of judgment for forfeiture. Ehrhorn filed a motion to vacate the judgment, contending it was based "on a faulty premise advanced by the [s]tate." After a hearing, the trial court denied Ehrhorn's motion in a September 2012 order.

¶3 In October 2012, Ehrhorn filed both a notice of appeal and a motion to set aside the judgment pursuant to Rule 60(c), Ariz. R. Civ. P. The trial court found that because of the pending appeal, it lacked jurisdiction to rule on the Rule 60(c) motion. For reasons not explained, Ehrhorn did not pay the filing fee, and this court ordered the appeal dismissed on January 7, 2013. The mandate issued on May 30, 2013.

¶4 Although the mandate had not issued, the state filed a response to Ehrhorn's Rule 60(c) motion in late January. Following a hearing, the court denied Ehrhorn's motion on April 8, 2013. Ehrhorn then filed a notice of appeal from that order on April 26, 2013.

Jurisdiction

¶5 Ehrhorn's April 26, 2013 notice of appeal states that he appeals from the trial court's decision "filed on April 8, 2013." Both Ehrhorn and the state assert that we have jurisdiction pursuant to

IN RE 1992 LEXUS SC400
Decision of the Court

A.R.S. § 12-2101(A). But we have an independent duty to review our own jurisdiction, and if it is lacking, we must dismiss the appeal. *See Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991); *see also Kim v. Mansoori*, 214 Ariz. 457, ¶ 5, 153 P.3d 1086, 1088 (App. 2007) (appellate court may examine its jurisdiction sua sponte). A reviewing court “always has jurisdiction to determine its own jurisdiction.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 118 (1998).

¶6 “[T]he filing of a notice of appeal . . . divests the trial court of jurisdiction to proceed other than to issue orders in furtherance of the appeal and to address matters unrelated to the appeal.” *In re Marriage of Flores & Martinez*, 231 Ariz. 18, ¶ 10, 289 P.3d 946, 949 (App. 2012). In addition, an appellate proceeding does not terminate until a mandate issues. *Id.*; *see also Borrow v. El Dorado Lodge, Inc.*, 75 Ariz. 218, 220, 254 P.2d 1027, 1028-29 (1953) (“[T]he appellate court’s judgment or order becomes effective [as of] the date of issuance of the mandate.”). The requirement for a mandate is the same whether an appeal is dismissed for lack of jurisdiction or decided on the merits, because in either situation a party can seek reconsideration. *See* Ariz. R. Civ. App. P. 22; *see also Flores*, 231 Ariz. 18, ¶ 11, 289 P.3d at 949. This is due to the fact that there is little utility in returning a case to the trial court until all appellate matters have been resolved. *See Flores*, 231 Ariz. 18, ¶ 11, 289 P.3d at 949. Ultimately, the mandate requirement seeks to avoid creating a situation in which both the appellate and trial courts assume jurisdiction of the same case simultaneously. *See id.* This same logic applies to instances where, as here, the appeal is dismissed for failure to pay filing fees. *See* A.R.S. § 12-322(A) (appeal deemed abandoned for failure to pay fee).

¶7 In sum, only this court had jurisdiction until the mandate issued in accordance with Rule 24, Ariz. R. Civ. App. P. The trial court lacked jurisdiction to issue the April 8, 2013 order, which rendered it a nullity. Ehrhorn could not appeal from an invalid order. *See Flores*, 231 Ariz. 18, ¶ 12, 289 P.3d at 949.

IN RE 1992 LEXUS SC400
Decision of the Court

Disposition

¶8 For the foregoing reasons, we dismiss the appeal for lack of jurisdiction.